

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

EILEEN CARRY,)	
)	
Plaintiff)	
)	No. 3:11-0446
v.)	Judge Campbell/Brown
)	
DEBRA GONZALEZ, M.D. and)	
DOES 1-20,)	
)	
Defendants)	

TO: THE HONORABLE TODD J. CAMPBELL

REPORT AND RECOMMENDATION

For the reasons stated below, the Magistrate Judge recommends that this case be dismissed against all Defendants except the Defendant Debra Gonzalez, for failure to prosecute.

BACKGROUND

The Plaintiff filed this litigation May 11, 2011.

At the time the matter was referred to the undersigned, an order was entered pointing out that the Plaintiff had filed two earlier suits against at least some of the same Defendants and both those cases were dismissed on summary judgment. The Plaintiff was specifically reminded that service of process must be obtained under Rule 4 of the Federal Rules of Civil Procedure within 120 days, or the case is subject to dismissal for failure to prosecute.

Although the Defendant filed a notice that she was substituting certain named Defendants for Doe Defendants 1 through 4 (Docket Entry 9), the Plaintiff has returned an executed summons

only as to the Defendant Debra Gonzalez. Although the Plaintiff was provided summonses as to the other four Defendants (Docket Entry 10), there is no indication that as of the date of this order she has accomplished service of process on these four added Defendants.

There is a pending motion to dismiss and for summary judgment (Docket Entry 14) filed on behalf of Dr. Gonzalez. Plaintiff should respond to this motion on or before **October 28, 2011**.

LEGAL DISCUSSION

The Plaintiff has sought no extension of time within which to obtain service of process, and although she was provided copies of summonses for the remaining four Defendants, there is no indication that she has made any attempt to serve them at this point. Under Rule 4(m) more than 120 days has expired since the complaint was filed and the Plaintiff has not sought additional time nor shown cause why she has not completed service of process on these four remaining Defendants. The Plaintiff was specifically cautioned of the need to obtain service of process within 120 days of the filing of her complaint (Docket Entry 4).¹

¹Although not necessary to this Report and Recommendation, it appears that any claims that Plaintiff may have against the four Defendants is, in all likelihood, barred by either the dismissal of her previous litigation or is well beyond any application statute of limitations.

RECOMMENDATION

For the reasons stated above, the Magistrate Judge recommends that the case as to the four Defendant that have not been served be dismissed.

Under Rule 72(b) of the Federal Rules of Civil Procedure, any party has **14 days** from receipt of this Report and Recommendation in which to file any written objections to this Recommendation with the District Court. Any party opposing said objections shall have **14 days** from receipt of any objections filed in this Report in which to file any responses to said objections. Failure to file specific objections within **14 days** of receipt of this Report and Recommendation can constitute a waiver of further appeal of this Recommendation. *Thomas v. Arn*, 474 U.S. 140 106 S. Ct. 466, 88 L.Ed.2d 435 (1985), *Reh'g denied*, 474 U.S. 1111 (1986).

ENTERED this 18th day of October, 2011.

/s/ JOE B. BROWN
JOE B. BROWN
United States Magistrate Judge